

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PAUL SANTIAGO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78096-COA

FILED

MAY 11 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Paul Santiago appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Santiago argues the district court erred by denying a claim of ineffective assistance of counsel raised in his June 27, 2013, petition and later-filed supplements. To prove ineffective assistance of counsel, a petitioner must demonstrate counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability, but for counsel's errors, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). To demonstrate prejudice regarding the decision to enter a guilty plea, a petitioner must demonstrate a reasonable probability, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*,

112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

Santiago argued his counsel was ineffective for failing to conduct an independent investigation so as to discover important impeachment and exculpatory evidence at an earlier time. Santiago asserted that, as a result of counsel's failure to conduct a proper investigation, he was not able to enter a knowing guilty plea because counsel was not prepared for trial and he could not properly evaluate the evidence that would have been produced at trial.

The district court conducted an evidentiary hearing concerning this issue and Santiago's counsel testified at the hearing. Counsel testified he and his investigator performed their own investigation, but also obtained information and evidence from the attorneys working on the civil litigation concerning the sexual abuse allegations involving Santiago. Counsel testified he had a cordial relationship with those attorneys and he believed it was most effective to obtain evidence through them because they had greater access to information through civil discovery than he did. Counsel testified that he received a substantial amount of evidence from the civil attorneys shortly before the scheduled trial date. Counsel testified that he

disclosed that evidence to the State and the State offered a plea deal that he believed was very favorable to Santiago. Counsel testified he explained to Santiago that he had not been able to review all of the evidence, but he felt it was in Santiago's best interest to accept the State's plea offer given the substantial penalties Santiago faced if Santiago were to be convicted at trial. Counsel testified that after their discussion of the evidence and the State's plea offer, Santiago decided to accept the State's offer and enter a guilty plea.

After the evidentiary hearing, the district court found counsel's investigation was reasonable under the circumstances of this case. Substantial evidence supports the district court's finding. *See State v. Love*, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993) (“[D]efense counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” (internal quotation marks omitted)). The district court further found that Santiago faced life in prison had he been convicted at trial and the plea offer gave Santiago the chance to receive probation. In light of the substantial reduction in possible penalties Santiago faced by accepting the State's plea offer, the district court found Santiago did not demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel conducted investigation in a different manner. Substantial

evidence supports the district court's finding. Therefore, we conclude the district court did not err by denying this claim.¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kathleen E. Delaney, District Judge
David Schieck Law Office
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹Santiago also argued that he should be permitted to withdraw his guilty plea because it was unknowingly entered due to counsel's failure to investigate and discover evidence. In light of the district court's findings regarding counsel's investigation and Santiago's decision to accept the plea offer, Santiago failed to demonstrate withdrawal of the plea was necessary to correct a manifest injustice. See NRS 176.165.